

Chauffeurs, Teamsters and Helpers Local Union 215, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (B & W Construction Company, a division of Babcock & Wilcox Company) and Kenneth Lee Boyd. Case 25-CB-3536

August 27, 1980

DECISION AND ORDER

BY MEMBERS JENKINS, PENELLO, AND TRUESDALE

On December 11, 1979, Administrative Law Judge Frank H. Itkin issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief,¹ and the General Counsel filed a reply brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions² of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

The Administrative Law Judge found that Skaggs, an officer of Respondent Union, "engaged in a course of conduct which was plainly calculated to discourage Wade's free access to the Board's remedial processes, in violation of Section 8(b)(1)(A) of the Act." Respondent has excepted, *inter alia*, to this finding by the Administrative Law Judge, and we find merit in its exception.

Employee-member Wade filed unfair labor practice charges against Respondent on February 10, 1978, and on March 31, 1978, a complaint issued alleging, *inter alia*, that the Union had violated Section 8(b)(1)(A) and (b)(2) of the Act. Thereafter, on or about August 4, 1978, Wade, the General Counsel, and the Union executed a settlement agreement concerning Wade's charges against the Union. It is the Board's established policy that presettlement conduct is barred from unfair labor practice litigation by a subsequent valid settlement agreement, except to the extent that unlawful conduct was unknown to the General Counsel or not readily discoverable through investigation or reserved from the settlement by the mutual understanding of the

¹ Respondent Union has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

² In the absence of exceptions thereto, we adopt the Administrative Law Judge's conclusion that the General Counsel has failed to establish by sufficient proof other allegations of unlawful conduct contained in the complaint.

parties, unless a respondent fails to comply with the settlement agreement.³ No party to this proceeding contends that any of the aforementioned exceptions apply, and since Skaggs' conduct with regard to Wade, found by the Administrative Law Judge to be violative of the Act, occurred prior to August 4, 1978, the date when the settlement agreement covering Wade's charges was executed, we shall reverse this finding by the Administrative Law Judge and modify his recommended Order accordingly.

With respect to employee-member Boyd, however, we reject Respondent's contention that its presettlement discussions with Wade and Boyd are inadmissible as privileged conversations under rule 408 of the Federal Rules of Evidence and that its conduct with respect to Boyd prior to Wade's settlement is barred from litigation.⁴

It was Wade's case, not Boyd's, that was settled, and Boyd's expulsion from the Union and his filing of unfair labor practice charges occurred several months after the settlement of Wade's case.⁵ Accordingly, we adopt the Administrative Law Judge's conclusion that Respondent's expulsion of Boyd was conduct independent of the settlement agreement concerning Wade and, thus, was not barred from litigation.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Chauffeurs, Teamsters and Helpers Local Union 215, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraph 1(b) and reletter the subsequent paragraph accordingly.
2. Substitute the attached notice for that of the Administrative Law Judge.

MEMBER JENKINS, dissenting in part:

Contrary to my colleagues, I agree with the Administrative Law Judge that Respondent Union

³ *Steves Sash & Door Company*, 164 NLRB 468 (1967).

⁴ *Northern California District Council of Hodcarriers and Common Laborers of America, AFL-CIO; Construction and General Laborers Union Local No. 185, AFL-CIO (Joseph Mohamed, Sr., an Individual, d/b/a Joseph Landscaping Service)*, 154 NLRB 1384 (1965).

⁵ There is no allegation that Respondent discriminated against Boyd for his having filed unfair labor practice charges. Accordingly, par. 1(b) of the Administrative Law Judge's recommended Order shall be deleted, since we have dismissed that allegation as it pertains to Wade.

violated Section 8(b)(1)(A) by threatening employee-member Wade that it would expel employee-member Boyd from the Union if Wade refused to withdraw his pending unfair labor practice charge against the Union. In so doing, I also find, contrary to my colleagues, that the resolution of this allegation is not controlled by the settlement agreement executed by the parties on August 4, 1978.

My colleagues' reversal of the Administrative Law Judge's finding and the dismissal of this allegation is not predicated on the merits but on policy grounds. They dismiss the allegation because it involves presettlement conduct barred from unfair labor practice litigation by a subsequent valid settlement agreement, relying on *Steves Sash & Door Company*.⁶ I have stated previously that a settlement agreement settles only matters intended to be determined and has no effect on conduct, presettlement, or post-settlement, not within the contemplation of the settlement.⁷ The settlement agreement executed by the parties on August 4, 1978, covered charges that Respondent Union violated Section 8(b)(1)(A) and (b)(2) of the Act by causing an employer to discharge Wade.⁸ The charge in dispute here was filed by Boyd in October 1978, well after the execution of the settlement agreement, *supra*. There is no evidence, on the face of the settlement agreement or otherwise, that the settlement agreement was intended to determine the instant complaint allegation. Nor does this allegation relate to the circumstances leading to the discharge of Wade covered in the settlement agreement. Instead, it relates to events occurring after the discharge and threatens future actions which culminated in Boyd's expulsion from the Union on September 19, 1978.

Thus, I find that the settlement agreement should not be deemed a bar to finding Respondent's presettlement misconduct an unfair labor practice in this proceeding. To find otherwise would be to leave unremedied a clear violation of the Act which antedated the settlement agreement by just 2 days but was unknown to the Regional Director when he approved the settlement agreement.⁹ Thus, I would find the disputed violation and provide an appropriate remedy.

⁶ 164 NLRB 468 (1967).

⁷ See my dissenting opinion in *Hollywood Roosevelt Hotel Co.*, 235 NLRB 1397, 1398 (1978). See also *Universal Building Services, Inc.*, 234 NLRB 362 (1978); and *Steves Sash & Door Company*, *supra*.

⁸ The settlement agreement contains a nonadmission clause but provides, *inter alia*, for payment to Wade of \$4,300 in backpay and posting of a notice.

⁹ The charge was filed in October 1978, more than 2 months after the execution of the settlement agreement.

APPENDIX

NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT threaten to expel or expel employee-members from our Union because employee-members refuse to withdraw pending unfair labor practice charges against our Union.

WE WILL NOT in any like or related manner restrain or coerce our employee-members in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act.

WE WILL reinstate employee-member Kenneth Lee Boyd to full membership in our Union without any loss of status as a member and reimburse him with interest for any losses because of his expulsion.

CHAUFFEURS, TEAMSTERS AND
HELPERS LOCAL UNION 215, A/W IN-
TERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA

DECISION

FRANK H. ITKIN, Administrative Law Judge: An unfair labor practice charge was filed in this case on October 13 and was amended on October 23, 1978. A complaint issued on October 31, 1978, and was amended at the hearing. The hearing was conducted in Evansville, Indiana, on March 19 and 20, 1979. Briefly, General Counsel alleges that Respondent Local 215 has violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended, by threatening its members with expulsion from the Union or other reprisals if they refused to withdraw unfair labor practice charges previously filed against the Union; by threatening its members with the filing of intraunion charges against them, expulsion, or other reprisals because they cooperated with the National Labor Relations Board in the investigation of unfair labor practice charges previously filed against the Union and, in addition, because they campaigned for and supported a particular candidate for union office; and by filing intraunion charges against member Kenneth Boyd, the Charging Party herein, conducting an intraunion trial against Boyd, adjudging Boyd guilty of the charges, and expelling Boyd from membership in Local 215. Respond-

ent Local 215 denies that it has violated the Act as alleged.

Upon the entire record, including my observation of the witnesses, and after due consideration of the briefs filed by counsel, I make the following:

FINDINGS OF FACT

A. Introduction

B & W Construction Company, a division of Babcock & Wilcox Company, is admittedly an employer engaged in commerce as alleged. Respondent Local 215 is admittedly a labor organization as alleged. Kenneth Skaggs was at all times pertinent here secretary-treasurer of Local 215 and a member of its executive board. Kenneth Boyd and Everett Wade were at all times pertinent here members of Local 215.

On February 10, 1978, Everett Wade filed unfair labor practice charges against Local 215 in Case 25-CB-3281. On March 31, 1978, a complaint issued in that proceeding alleging, *inter alia*, that Local 215 had violated Section 8(b)(1)(A) and (b)(2) of the Act by causing an employer to discharge Wade. On or about August 4, 1978, the parties to the above proceeding executed a settlement agreement.¹ See General Counsel's Exhibits 12, 13, and 14. The events described below concern Kenneth Boyd's participation in the above proceeding and ensuing conduct by Local 215 ultimately resulting in Boyd's expulsion from the Union.

B. The Statements by Union Officer Skaggs To Members Wade and Boyd; Boyd's Expulsion From the Union

Kenneth Boyd testified that he became a member of Local 215 in May 1974; that he started working for B & W Construction at the Big Rivers construction site in Sebree, Kentucky, in May 1977; that he was the first teamster at the site and, consequently, became the union "steward" there; that he "called" Everett Wade to this job during late November 1977; and that Wade subsequently "lost his job" at the site during late January 1978. Boyd further testified that about February 1, 1978, both he and Wade went to the union hall to speak with Business Agent Louis Smith about Wade's loss of employment. According to Boyd,

Wade asked him [Smith], what was going on. Smitty said, what do you mean. Wade said, how come you took my job—got me run off down there. Smitty said, well we got rules to go by here and you didn't follow them. [Wade] said, well show me the rules. Smitty started beating on the book on the desk and said, there's the rules in here, I don't have to show you. [Wade] said, well what am I going to do. [Smith] said, well we'll call you when you get a job. [Wade] said, well what do you think the NLRB will think about it. Smitty said, I don't like

being threatened, got up, slammed the book down and left.

Wade, as noted above, filed an unfair labor practice charge against Local 215 on February 10, 1978. A complaint issued in that proceeding on March 31, 1978, and Boyd gave a statement to a Board agent in that case on or about March 22, 1978. Thereafter, on or about April 1, 1978, as Boyd testified, Union Business Agent Smith removed Boyd as steward at the Big Rivers job and replaced him with Steward Paul Jones.

Subsequently, on July 20, 1978, Boyd, as he further testified, was assigned the job of operating a truck at the Big Rivers site. On that day, Boyd permitted Harlan Scott, a laborer, to drive the truck with Boyd seated alongside of Scott. According to Boyd, Union Steward Paul Jones

... came over screaming at the truck, what's that "blank" laborer doing driving that truck, you know it's our work. I [Boyd] said, I'm sick, I was just waiting until somebody got here so he could take over He [Jones] said, I don't care if you're sick or not, that laborer isn't driving the truck. He [Jones] jerked the door open, pushed Scottie over and grabbed the keys I [Boyd] got out of the truck, I was drinking a coke, I threw the coke bottle in the back of the truck, went around, he [Jones] was holding the keys I snatched them out of his hand, I gave them to Scott, I told Scott drive to the office, I jumped on the tailgate.

Union Steward Jones promptly reported this incident to Local 215 Business Representative Arthur Buchanan. Buchanan arrived at the Big Rivers site later that day and, as Boyd testified, warned Boyd "if [Boyd] did it again, [Buchanan] was going to jerk [his] book." Boyd recalled: "We were both pretty well hollering." Thereafter, Jones prepared and filed intraunion charges against Boyd. See General Counsel's Exhibit 10.

Boyd also testified that on or about August 2, 1978, Union Secretary-Treasurer Kenneth Skaggs met with Boyd and Wade at a restaurant in Sebree, Kentucky. Boyd recalled:

Well, Mr. Skaggs was trying to settle the [unfair labor practice] case with Wade and he offered him \$2500 and he said . . . if he [Wade] didn't take that he would take my book. They'll drop my charges if he'd take \$2500 He [Skaggs] said that if Wade would take his settlement and not go to court, that the Hall would drop my [Boyd's] charges.

Boyd noted that "the NLRB would not let us settle like that." Boyd later appeared at the unfair labor practice hearing in Wade's case on or about August 3, 1978. As stated, the case was settled. The settlement agreement, as approved by the Board's Regional Director, provides for, *inter alia*, the payment of \$4,300 to Wade and the posting of a notice.

¹ The settlement agreement contains a nonadmission clause. It provides *inter alia*, for the payment to Wade of \$4,300 in backpay and the posting of a notice.

Local 215 thereafter proceeded with the intraunion charges which had been filed by Steward Jones against Boyd. The intraunion hearing was held on August 23, 1978, before the Union's executive board. See Respondent's Exhibit 7. Subsequently, on September 19, 1978, the executive board expelled Boyd from membership in Local 215. See General Counsel's Exhibit 11.²

Everett Wade testified with respect to the events culminating in the settlement of his unfair labor practice case against Local 215. Wade recalled, *inter alia*, that he and Boyd met with Union Representative Smith during early February 1978; that he apprised Smith: ". . . if I couldn't work it out I was going to the NLRB . . ."; and that Smith "said that he didn't have to sit there and be threatened." Wade later filed an unfair labor practice charge against the Union. Wade also testified, *inter alia*, that Union Representative Skaggs asked him and Boyd during early August 1978,

. . . if we would agree to settle for the \$2500, my job and charges against Kenny Boyd's book

Skaggs assertedly warned Wade: ". . . if the charges were not dropped or if we didn't settle the case, that Kenny's book would be pulled." Wade recalled that Boyd was subsequently present at his unfair labor practice hearing as a "witness." As noted, Wade's case was settled.³

Kenneth Skaggs, secretary-treasurer of Local 215 and a member of its executive board, acknowledged in his testimony that he met with Boyd and Wade on two occasions to discuss a proposed settlement of Wade's pending unfair labor practice case and the pending intraunion charge against Boyd. The first meeting was during late July 1978. Skaggs testified:

. . . I picked up Kenny Boyd. He and I went to the Sebree restaurant. Everett Wade came in. Everett Wade had charges filed against this Local Union. I offered to settle with Everett Wade an "X" amount of money that the Local Union would pay him provided that he would drop the charges against the Local, and if he accepted this—the money that I of-

² Boyd claimed that, during late 1977, he had supported Robert Riley for president of Local 215 instead of Cliff Arden, "who ended up running" for that office. Arden won. Boyd, however, acknowledged that Riley was never actually "nominated"—Riley had "dropped out" before that time. Boyd and Wade, whose testimony is discussed below, were both convicted of theft. See Resp. Exhs. 1 and 2. Further, Boyd and Wade were brothers-in-law and had been friends for about 10 years.

³ Wade, like Boyd, has been convicted of theft. See Resp. Exhs. 1 and 2. Wade has also been convicted of perjury. See Resp. Exhs. 3(a) and 3(b). Wade was asked on cross-examination:

Q. Have you ever participated with others in a scheme to do bodily harm to a member of this Union or to an agent of this Union?

Wade refused to answer this and related questions claiming his privilege against self-incrimination. No adverse inferences may be drawn from Wade's assertion of this privilege. However, deputy sheriff Michael Craddock testified that, about December 1978, Wade had admitted to him that,

. . . approximately a year ago, there was a car that resembled Mr. Cliff Arden's [the Local 215 president] that was brought to his garage and that it was measured between the muffler and the floorboard of the car as to how many sticks of dynamite would be put underneath it, that the dynamite would be wired to the backup light on the car.

ferred him—I would go and talk to Jones [the Union steward] and get Jones to drop the charges—or try to get him to drop the charges against Boyd.

I felt . . . that the nature of the charges that was against Kenny [Boyd] was serious enough that he would lose his book if this thing was not settled, and I told him so.

Skaggs could recall no prior occasion when a similar intraunion charge had been filed by one member against another.

Skaggs further testified that he again met with Boyd and Wade on or about August 2, 1978. Skaggs recalled:

I told them that I felt like they would be better off if they would accept the settlement, and that if I could get Mr. Jones to drop the charges against Mr. Boyd, because I thought they were serious enough charges that he [Boyd] was going to lose his book if they didn't. And, they told me at that time they couldn't settle because the Board agent wouldn't let them settle.

As stated, the Wade unfair labor practice case was later settled upon terms different from those proposed by Skaggs. Skaggs participated in the subsequent intraunion trial against Boyd resulting in Boyd's expulsion on September 19, 1978. See Respondent's Exhibit 7 and General Counsel's Exhibit 11.

Union Business Representative Louis Smith testified that Boyd had served as union steward at the Big Rivers construction site; that both Boyd and Wade met with Smith at the union hall during early February 1978 concerning Wade's complaint against Local 215; that Wade then "threatened to go to the Board"; that Smith "gave [Wade] the [Board's] address"; that Smith also stated to Boyd and Wade on this occasion that he "didn't have to stand there and be threatened"; and that Boyd was subsequently "removed" as steward at the Big Rivers site and replaced by Paul Jones.

Union Steward Paul Jones recalled the incident at the Big Rivers construction site involving Boyd on July 20, 1978, in part as follows:

. . . I [Jones] told him [Boyd] that he had been warned about giving our work to laborers and other crafts on the jobsite many times before and I would file charges if he continued. . . . I told the laborer that he wouldn't drive the truck, and I reached in and took the keys out of the ignition [Boyd] got out and jerked the keys out of my hand, he gave me the forearm or elbow here . . . and pushed me back, then he jerked the keys out and gave them to Scottie, the laborer, and told him to drive the damn truck and to hell with the steward

Jones reported the incident to Business Representative Buchanan and later filed intraunion charges against Boyd. See General Counsel's Exhibit 10.

Union Business Representative Arthur Buchanan, who arrived at the Big Rivers construction site on July 20, 1978, testified in part as follows:

... I stated to Mr. Boyd that this policy of letting them [laborers] drive that truck was wrong, and that I wanted it stopped The policy of him letting a laborer drive his truck . . . had to stop on this job.

Buchanan acknowledged that this was the "only problem" at the site; that Boyd was not told that "charges might be filed against him"; and that nothing else was said at the time.⁴

On the entire record in this case, including the demeanor of the witnesses, I credit the testimony of Union Secretary-Treasurer Skaggs, as quoted above, pertaining to his two conversations with Boyd and Wade during late July and early August 1978. Insofar as the testimony of Wade and Boyd differs with the above testimony of Skaggs, I am persuaded here that the testimony of Skaggs is more complete, trustworthy, and reliable. Further, with respect to the July 20, 1978, incident at the Big Rivers construction site, I credit the testimony of Union Steward Jones and Union Representative Buchanan, as detailed above. Insofar as the testimony of Boyd, Scott, and Mickey Brown differs with testimony of Jones and Buchanan, I find here that the testimony of the latter witnesses is more reliable. I also credit the testimony of Union Representative Smith concerning his meeting with Boyd and Wade during early February 1978, and related events, as recited above. Insofar as the testimony of Boyd and Wade differs with this testimony of Smith, I find and conclude here that the testimony of Smith is more forthright and credible. In addition, I credit the testimony of Union Steward Alfred Brown with respect to Local 215's policy of enforcing the Union's claim to truckdriving work at the construction site. His testimony is candid and complete in this respect. Further, I note that Deputy Sheriff Craddock's testimony concerning Wade, as quoted above, stands undenied. I credit Craddock's testimony.⁵

Discussion

Section 8(b)(1)(A) of the National Labor Relations Act makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7" The Second Circuit, in *N.L.R.B. v. Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and*

⁴ Harlan Scott, the laborer who was permitted by Boyd to drive the truck on July 20, 1978, testified Mickey Brown, another laborer who was a passenger in Boyd's truck on July 20, 1978, also testified. Their versions of this incident differ in part. They also claimed, *inter alia*, that nonteamsters have driven trucks at the site on prior occasions. However, Alfred Brown, also a steward at this site, explained that the Teamsters generally has enforced its jurisdictional claim to such work.

⁵ As recited above, I have not credited, insofar as pertinent here, the testimony of Wade. I have found him to be an unreliable and untrustworthy witness. Under the circumstances, it is unnecessary for me to determine whether to strike his testimony on direct examination because he claimed his privilege against self-incrimination on cross-examination. Cf. *ASC Industries, Inc.*, 217 NLRB 323, fn. 1 (1975). Respondent's motion for receipt of certain documents pertaining to the interlocutory appeal from my ruling in connection with Wade's claim of privilege is granted. Resp. Exhs. 9, 10, and 11 are received into evidence.

In addition, on this record, I find the testimony of William McDowell and Union Representative Buchanan pertaining to alleged acts of misconduct by both Wade and Boyd unclear, confusing, and unreliable.

Helpers of America [August Bohl Contracting Co., Inc., et al.], 470 F.2d 57, 60-61 (1972), restated the controlling principles as follows:

It is settled that a union may properly discipline a member pursuant to "a properly adopted rule which reflects a legitimate union interest, [as long as the rule] impairs no policy [which] Congress has imbedded in the labor laws, and is reasonably enforced against union members. . . ." *Scotfield v. N.L.R.B.*, 394 U.S. 423, 430, 89 S.Ct. 1154, 1158, 22 L.Ed.2d 385 (1969). It is equally settled that a union violates Section 8(b)(1)(A) of the Act when it restrains or coerces a member from exercising rights guaranteed by Section 7 by punishing him for utilization of the Board's remedial processes. *N.L.R.B. v. Industrial Union of Marine & Shipbuilding Workers of America, AFL-CIO*, 391 U.S. 418, 425, 88 S.Ct. 1717, 20 L.Ed. 2d 706 (1968), *N.L.R.B. v. International Union of Operating Engineers, Local 825, IUOE, AFL-CIO*, 420 F.2d 961 (3d Cir. 1970). See generally, 1971-72 Annual Survey of Labor Relations Law, 13 B.C.Ind. & Com.L.Rev. 1347, 1431-1441 (1972). In *Industrial Union, supra*, the Supreme Court, 391 U.S. at p. 424, 88 S.Ct. at p. 1721, stated:

A healthy interplay of the forces governed and protected by the Act means that there should be as great a freedom to ask the Board for relief as there is to petition any other department of government for a redress of grievances. Any coercion used to discourage, retard, or defeat that access is beyond the legitimate interests of a labor organization.

Applying these principles to the instant case, I find and conclude that Union Secretary-Treasurer Skaggs, in attempting to get employee-member Wade to withdraw his pending unfair labor practice charge against the Union, resorted to unlawful "coercion used to discourage, retard, or defeat . . . access" to the Board's "remedial processes." (*Ibid.*) Thus, Skaggs admittedly discussed with employee-members Wade and Boyd on two occasions the terms of the Union's proposed settlement of Wade's pending unfair labor practice case against the Union and the pending intraunion charges against Boyd. Skaggs offered Wade \$2,500 if Wade "would drop the charges against the Local" and "if [Wade] accepted . . . the money" Skaggs "would go and talk" to Union Steward Jones "and get Jones to drop the [intraunion] charges . . . or try to get [Jones] to drop the charges against Boyd." Skaggs admittedly made clear to both Wade and Boyd "that the nature of the charges against Kenny [Boyd] was serious enough that he would lose his book if this thing was not settled." However, Wade and Boyd subsequently explained to Skaggs "that they couldn't settle because the Board agent wouldn't let them settle." As noted, Wade's unfair labor practice case was later settled, with approval of the Board's Regional Director, for a substantially greater sum of money than proposed by Skaggs and with the requirement that a notice be posted. Thereafter, the Union's executive

board, including Skaggs, conducted its trial of Boyd on the intraunion charges pending against him and expelled the employee-member.

The plain meaning of Skaggs' proposal to Wade and Boyd was that, if Wade did not accept the Union's offer to drop his pending unfair labor practice charge, Boyd risked expulsion from the Union as a consequence of the intraunion charges subsequently filed by Steward Jones against Boyd. Skaggs, by admittedly melding the Boyd-Wade settlement proposal in this manner, engaged in a course of conduct which was plainly calculated to discourage Wade's free access to the Board's remedial processes, in violation of Section 8(b)(1)(A) of the Act.

Moreover, on this record, the subsequent expulsion of Boyd from the Union when assessed in the context of Skaggs' earlier warning that Boyd "would lose his book if this thing was not settled," Boyd's open involvement with Wade in Wade's efforts to redress his firing, the timing of this unprecedented expulsion, and Skaggs' full participation in the expulsion proceeding without any apparent effort to get Union Steward Jones to drop the intraunion charges against Boyd, all persuade me that the real reason for Boyd's expulsion was the failure of Boyd and Wade to accept Skaggs' earlier proposed settlement on behalf of the Union. Indeed, as noted above, Union Business Representative Buchanan admittedly apprised Boyd on July 20, 1978, that the "policy of [Boyd] letting a laborer drive his truck . . . had to stop on this job"; this was the "only problem"; and Boyd was not then told that any "charges might be filed against him" as a consequence of this incident. In sum, I reject the Union's asserted reason for Boyd's expulsion here as pretextual and not the real reason. Respondent Union, by the foregoing conduct, has violated Section 8(b)(1)(A) of the Act.⁶

CONCLUSIONS OF LAW

1. B & W Construction Company is an employer engaged in commerce as alleged.
2. Respondent Union is a labor organization as alleged.

⁶ Respondent Union argues that "all testimony concerning the conversations during settlement discussions between Wade and Skaggs should be stricken from the record or in the alternative disregarded in their entirety." Respondent relies upon, *inter alia*, Rule 408 of the Federal Rules Of Evidence and related cases. However, a union is not privileged by this rule and the underlying policy for the rule to threaten or coerce an employee-member in an attempt to secure a favorable settlement of a pending charge before the Board. Such conduct, as found unlawful here, does not constitute "bona fide settlement negotiations aimed at disposing of the instant proceeding." Cf. *Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO (Altomose Construction Co.)*, 222 NLRB 1276, fn. 1 (1976).

Respondent Union also argues that the settlement agreement in Wade's case "bars consideration of alleged violations occurring prior to its approval by the Regional Director," noting, *inter alia*, that Wade and Boyd "testified that they fully discussed their conversations with Mr. Skaggs with" Board counsel, and citing, *inter alia*, *Steve's Sash & Door Company*, 164 NLRB 468, 473 (1967). I note, however, that the gravamen of the instant case is a sequence of events culminating with the expulsion by the Union of Boyd, after the settlement in Wade's case. In short, we are concerned here not only with Skaggs' presettlement coercion, but also with the postsettlement threat made good. Board policy in my view, would not bar the full litigation of this conduct, especially where the total course of conduct is calculated to prevent free access to the Board and its processes. Cf. *Laminite Plastics Mfg. Corp.*, 238 NLRB 1234 (1978).

3. Respondent Union violated Section 8(b)(1)(A) of the Act by threatening to expel employee-member Boyd from the Union if employee-member Wade refused to withdraw his pending unfair labor practice charge against the Union and by subsequently expelling employee-member Boyd from the Union for this reason.

4. Insofar as the complaint alleges additional conduct by Respondent Union to be further violative of Section 8(b)(1)(A) of the Act, General Counsel has failed to establish by sufficient proof these additional allegations and they are therefore dismissed.

5. The unfair labor practices found above affect commerce as alleged.

REMEDY

To remedy the unfair labor practices found above, Respondent Union will be directed to cease and desist from engaging in the conduct found unlawful and in any like or related conduct and to post the attached notice. Respondent will also be directed to reinstate employee-member Boyd to full membership in the Union without any loss of status as a member and reimburse him, with interest thereon, for any losses suffered because of his expulsion, interest to be computed and determined in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).⁷

ORDER⁸

The Respondent, Chauffeurs, Teamsters and Helpers Local Union 215, a/w International Brotherhood Of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Threatening to expel and expelling employee-members from Local 215 because employee-members refuse to withdraw pending unfair labor practice charges against Local 215.

Punishing employee-members for filing unfair labor practice charges with or for utilizing the processes and procedures of the National Labor Relations Board.

(c) In any like or related manner restraining or coercing employee-members in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which will effectuate the purposes and policies of the Act:

(a) Reinstate employee-member Kenneth Lee Boyd to full membership in Local 215 without any loss of status as a member and reimburse him, with interest, for any losses suffered because of his expulsion, as provided in the Board's Decision and Order.

(b) Post at its business office and all other places where notices to members are customarily posted in conspicuous places copies of the attached notice marked

⁷ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

⁸ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

"Appendix."⁹ Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by an official representative of Respondent, shall be posted by Respondent immediately upon receipt

⁹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

thereof, and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.¹⁰

¹⁰ General Counsel's motion to correct the record, which is unopposed, is granted.